INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. —

RAYMOND R. BEST, ET AL., PETITIONERS

v.

HUMBOLDT PLACER MINING COMPANY AND DEL DE ROSIER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of Raymond R. Best, as State Supervisor, Bureau of Land Management, and Walter E. Beck, as Manager, District Land Office, Bureau of Land Management, Department of the Interior, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the district court (R. 17–21) is reported at 185 F. Supp. 290. The opinion of the court of appeals (App. A, *infra*, pp. 20–29) is reported at 293 F. 2d 553.

JURISDICTION

The judgment of the court of appeals was entered on August 18, 1961 (App. B, *infra*, p. 30). On November 15, 1961, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to and including December 16, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the filing of a suit by the United States to condemn mining claims in public lands deprives the Secretary of the Interior of his authority to conduct a subsequently-instituted administrative proceeding to determine the validity of such claims.[1]

STATUTES AND RULE INVOLVED

R.S. 441, 5 U.S.C. 485, provides in pertinent part:

> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects and agencies:
>
> * * * * *
>
> 4. Bureau of Land Management.
>
> * * * * *
>
> 13. Public lands, including mines.

R.S. 2478, 43 U.S.C. 1201, provides as follows:

> The Secretary of the Interior, or such officer as he may designate, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specially provided for.

---

[1] A related question is presented in *Duguid* v. *Best*, No. 349, now pending on petition for certiorari.

Rule 71A(h) of the Federal Rules of Civil Procedure provides as follows:

> If the action involves the exercise of the power of eminent domain under the law of the United States, any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation shall be the tribunal for the determination of that issue; but if there is no such specially constituted tribunal any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the court may fix, unless the court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

STATEMENT

This case originated with the filing of a complaint by the respondents, Humboldt Placer Mining Company and De Rosier, for an injunction to restrain

the officers of the Department of the Interior from proceeding with an administrative determination of the validity of respondents' mining claims. The facts are not in dispute.

In June 1957, the United States brought a condemnation action in the United States District Court for the Northern District of California in order to obtain immediate possession of and title to any outstanding mining interests in certain federally owned land which was needed for the construction of the Trinity River Dam and Reservoir in California.[2] The respondents claim to own valid unpatented mining claims upon this land. By an amendment to the complaint the United States reserved jurisdiction to determine the issue of the validity of the mining claims in administrative proceedings conducted by the Bureau of Land Management of the Department of the Interior (R. 22). The district court has issued to the United States a writ of possession, but all other issues in the condemnation action are still pending in the district court.

In March 1960, officials of the Department of the Interior filed in the local office of the Bureau of Land Management at Sacramento, California, an amended complaint seeking an administrative determination of the validity of respondent's mining claims (R. 10).[3] No hearing upon the validity of the claims had been held in the district court, and none was then in process.

---

[2] *United States* v. *3563.17 Acres* (N.D. Cal.) No. 7570.

[3] The original complaint, which is not included in the record of the present litigation, was filed in May of 1958.

Respondents, who were ordered to appear before the Bureau of Land Management to take part in this determination, thereupon brought the present action for an injunction against the administrative proceedings, alleging that these proceedings were in derogation of the jurisdiction of the district court and would subject the respondents to a multiplicity of suits (R. 3). The proceeding was heard by the same district judge who was sitting in the pending condemnation action.

The district court granted summary judgment for the United States (R. 21). The court noted that the United States had reserved jurisdiction to determine the validity of respondents' claims in administrative proceedings and held that there was no evidence of harassment of the respondents since the government's purpose in filing the condemnation action prior to instituting administrative proceedings was only to obtain immediate possession of the land. "No authority, or reason," it held, "will support the proposition that such suits constitute an irrevocable election of forum" (R. 18). Finally, the district court recognized that there were both precedent and substantial reasons for it to stay its hand on the issue of validity of mining claims in order to allow a "tribunal of more limited jurisdiction" to adjudicate "the issues peculiarly within its competency (R. 19)."

The Court of Appeals for the Ninth Circuit reversed. It held that, since the question of title, which is necessarily involved in any condemnation action, was brought into issue by the complaint filed by the United States in the district court, the Secretary of

the Interior had elected to forgo administrative determination of this issue. In addition, the court suggested that in its view Rule 71A(h) of the Federal Rules of Civil Procedure prevents the condemnation court from allowing any other court or administrative agency to determine the issue of title to condemned property.

REASONS FOR GRANTING THE WRIT

This case presents an important question of first impression relating to the respective jurisdictions of the district court and the Department of the Interior to determine the validity of mining claims on public lands condemned by the United States. The court of appeals held that the government's filing of an action to condemn such claims ousts the Secretary of the Interior of his usual authority to adjudicate them, and that the district court cannot even permit the Secretary to conduct an administrative proceeding for such adjudication. The holding, ~~with~~ which overturns a settled administrative practice of many years standing, is not only without support in judicial authority but is contrary to the reasoning of the pertinent decisions of this Court and will, unless reversed, have a significant impact upon a large number of pending and future condemnation cases which involve questions as to the validity of mining claims on public lands.

Under the provisions of 30 U.S.C. §§ 22, 26, and 28 and the implementing federal regulations, 43 C.F.R. § 185.1 *et seq.*, persons may obtain the rights to possession of public land and to the removal and use of

minerals found on this land by discovering a valuable mineral deposit, complying with the procedural requirements for making a "location", and devoting at least $100 worth of labor or improvements to the claim each year. The interest thus obtained, though less than a patent interest in fee, is a valid property right enforceable against both the government and third parties and compensable if taken by the government. Mining claims on public lands are recorded locally, and not with the Department of the Interior.

Since no notice to the federal government is requisite to perfect such a property interest in what has been public land, regulations authorized by the statute [4] and codifying what has long been the practice as to mineral claims furnish a procedure by which the government may challenge the validity of any such claim.[5] A "contest" is initiated by the Manager of the local land office of the Department of the Interior and heard before a trial examiner. There are appropriate provisions for notice and a hearing which includes the right of full cross-examination of witnesses. Appeals from the examiner's decision may be taken to the Director of the Bureau of Land Management and from the Director to the Secretary of the Interior. At each step of these hearings the Department of the Interior must comply with the requirements of the Administrative Procedure Act. *United States* v. *O'Leary*, 63 I.D. 341. Any person adversely affected

[4] 5 U.S.C. 485; 43 U.S.C. 1201.

[5] 43 C.F.R. (1961) §§ 221, 221.67; see *Cameron* v. *United States*, 252 U.S. 450.

by the action of the Department of the Interior is entitled to judicial review. See, *e.g.*, *Foster* v. *Seaton*, 271 F. 2d 836 (C.A.D.C.). It is this system of administrative determination and ultimate judicial review which provides the basic framework for the determination of the validity of a mining claim on federally owned lands.* The regularity and frequency with which it is used are indicated by the fact that in connection with the single dam and reservoir project out of which the present suit arose, 6,200 unpatented mining claims have been processed by the Sacramento Regional Office of the Department of the Interior.

The Ninth Circuit's holding that the United States may not utilize this long established administrative procedure for determining the validity of mining claims once it has filed a condemnation action is based partly upon an erroneous application of the doctrine of election of remedies and partly upon a misinterpretation of Rule 71A of the Federal Rules of Civil Procedure. The results of the Ninth Circuit's decision are (1) to impose upon the government the dilemma of either foregoing the immediate possession of land required for public use or else abandoning the traditional and expeditious method of determining the validity of mining claims by the Department of the Interior; (2) to prevent the reference to an experienced and expert administrative body of questions relating to mining claims not within the general experience of the district courts; (3) to impose an undele-

* The validity of the claim may also be determined in a proceeding instituted by a third party claiming adversely to the claimant, 43 C.F.R. 221.51 (1961), and in a proceeding initiated by the claimant himself in order to obtain a patent for the land claimed, 30 U.S.C. 29.

gable burden of very substantial proportions upon the district courts; and (4) to unsettle a multitude of mineral claims that the parties have regarded as finally determined by the Department of the Interior. To avoid these results is a matter of substantial importance meriting the granting of the writ of certiorari.

1. In *United States* v. *93.970 Acres*, 360 U.S. 328, it was argued that the United States waived its right to deny the claimant's interest in certain property by bringing an action to condemn the same interest. The Court rejected this contention holding that the doctrine of election of remedies does not force the government to choose between abandoning its contention that the adverse claimant had no rights in the property and giving up its right to obtain immediate possession under condemnation law. The Court stated (360 U.S. at 332):

> We see no reason either in justice or authority why such a Hobson's choice should be imposed and why the Government should be forced to pay for property which it rightfully owns merely because it attempted to avoid delays which the applicable laws seek to prevent. Such a strict rule against combining different causes of action would certainly be out of harmony with modern legislation and rules designed to make trials as efficient, expeditious and inexpensive as fairness will permit.

While *United States* v. *93.970 Acres* involved the necessity of foregoing substantive rights if a condemnation action is brought and not, as here, the necessity of foregoing the usual procedure for having these

rights determined, the underlying principle is unquestionably the same in both cases.

Under the ruling below the customary administrative procedure for contesting mining claims can no longer be used by the government in any case in which immediate possession of the land is necessary to a government project. The mere filing of a condemnation action, which is a prerequisite to obtaining immediate possession, was held to constitute an irrevocable election to have the issue of title decided by the district court. But the United States has not in any realistic sense chosen to submit the issue of title to the district court. As the district court held (R. 22):

> In the condemnation cases here involved the purpose of the suit was to obtain immediate possession of the lands, and the Government has not raised therein the issue of validity of the mining claims concerned; on the contrary, it has specifically asserted its right to retain jurisdiction of this issue for determination by the Bureau of Land Management.

Thus, the Ninth Circuit could not have found an election of remedies as a matter of choice but only as a rule of law applicable to the government's attempt to obtain immediate possession by bringing the condemnation action regardless of the government's intention.

This ruling imposes upon the government in a case such as this a Hobson's choice similar in all material respects to that condemned in *United States* v. *93,970 Acres*. In both cases the government could have proceeded to determine the issue of title prior to bringing a condemnation action, but only at the

expense of foregoing immediate possession. In both cases a condemnation action was appropriate because, if the issue of validity of title were determined against the government, the government would still wish to take the property involved, paying the just compensation determined in the condemnation proceeding. In *United States* v. *93.970 Acres* this Court declared that no mere inconsistency of pleadings prevents the United States from asking a district court both to resolve the question of title and to determine the amount of compensation required for the taking if title is in the defendant. There is no greater reason why the United States should be precluded from asking the district court both to allow an administrative tribunal to determine the question of title and then itself to determine the amount of compensation required for the taking if title is in the defendant.

In the present case there is an additional reason, not present in *United States* v. *93.970 Acres*, why the doctrine of election of remedies should not be applied. With at least some superficial plausibility the Ninth Circuit could say that the Secretary of the Interior "elected to put into issue in the condemnation action the validity of the mining claims" (App. A, p. 25), for here, coincidentally, the same Department that was authorized to determine the validity of mining claims had instituted the condemnation action. But the statutory authority under which the Secretary of the Interior instituted the condemnation action is also available to officers of the other government depart-

ments.[6] If the mere filing of a complaint in condemnation constitutes the "election" found by the Ninth Circuit, then an election would equally be made in condemnation suits brought by the Attorney General at the request of the Secretaries of the Army, Navy, Air Force, Agriculture, or any other governmental official.[7] Yet obviously none of these officials has the authority to "elect" to waive the jurisdiction of the Secretary of the Interior to determine the validity of claimed mineral interests in public lands. The result of the Ninth Circuit's opinion is either to bestow upon other government officials the power to waive the Secretary of the Interior's jurisdiction or unjustifiably to impose upon the Secretary of the Interior a condition of obtaining immediate possession of land which cannot be imposed upon the officers of any other governmental department.

[6] 40 U.S.C. S. 257 provides:

Condemnation of realty for sites and other uses; jurisdiction.

In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice.

[7] In fact, such cases are now pending in the Southern District of California. See, *e.g.*, *United States* v. *324.27194 Acres*, No. 769–60Y (temporary restraining order granted November 14, 1961, pending determination of this litigation.)

2. In holding that the filing of the condemnation action did not constitute an irrevocable choice of forum, the district court stated that "where a court has jurisdiction of an entire controversy, it may wait until a court or tribunal of more limited jurisdiction adjudicates the issues peculiarly within its competency, and then give binding effect to the decision of such court of tribunal" (R. 19). This statement is in accord with the settled practice under which federal courts have stayed the exercise of their jurisdiction in appropriate circumstances to enable either a state court[8] or an administrative tribunal,[9] to adjudicate issues peculiarly within its competency. This has been true of questions of state law in condemnation proceedings where the federal courts have stayed their hands pending litigation in the state courts on questions of state tax matters, and questions of local property law involving liens, leases, and reversions.[10] It should be no less true of issues arising in condemnation cases that are within the particular competence of a federal administrative agency.

---

[8] See, *e.g.*, *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496; *Burford* v. *Sun Oil Co.*, 319 U.S. 315; *Louisiana Power & Light Co.* v. *City of Thibodaux*, 360 U.S. 25.

[9] See, *e.g.*, *Texas & Pacific Ry.* v. *American Tie Co.*, 234 U.S. 138; *United States* v. *Western Pacific R. Co.*, 352 U.S. 59; *Pennsylvania R. Co.* v. *United States*, 363 U.S. 202.

[10] *United States* v. *Adamant Co.*, 197 F. 2d 1, 12 (C.A. 9); *United States* v. *25.96 Acres, Bergen County, N.J.*, 153 F. 2d 277 (C.A. 3); *Florida Beaches* v. *Niagara Inv. Co.*, 148 F. 2d 963 (C.A. 5); *United States* v. *150.29 Acres in Milwaukee, Wisc.*, 135 F. 2d 878 (C.A. 7); *United States* v. *Eisenbeis*, 112 Fed. 190 (C.A. 9); *United States* v. *70.39 Acres of Land*, 164 F. Supp. 451, 481 (S.D. Cal.).

This Court has pointed out that:

> • • • in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure."

It is arguable that a district court is required to refer to the Interior Department questions as to the validity of unpatented mining claims that arise in federal condemnation suits. But in any event, a district court plainly has discretion to permit the litigation before the Department of such of those questions as it deems appropriate for the exercise of the Department's expert skill and knowledge.

The determination of the issue of validity of an unpatented mining claim turns upon the application of such statutory or regulatory requirements as dis-

---

[11] *Far East Conference* v. *United States*, 342 U.S. 570, 574–575; see also *United States* v. *Western Pac. R. Co.*, 352 U.S. 59, 64–65.

tovery of a "valuable" mineral deposit,[12] such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success",[13] making an appropriate "location", and maintaining the claim by complying with certain assessment work requirements of the statute. The application of these requirements to a particular mining claim involves both the exercise of highly specialized judgment on facts common only to mining claims[14] and an understanding of the relationship of these requirements to the structure and purpose of the mining laws and the extensive regulations promulgated by the Department of the Interior.[11] It is therefore not only permissible but highly desirable that, under ordinary circumstances, the district court allow a referral of the issue of validity of mining claims to the Department of the Interior.

In the present case, the district court was fully justified in concluding (R. 19) that "there is every

---

[12] *Castle* v. *Womble*, 19 L.D. 455, 457.

[13] Factual questions which must be resolved in order to determine the validity of mining claims include: the value of the various grades of mineral found; the likely quantity of the mineral discovered; where markets for specific minerals are located and the costs of transportation; the cost of mining and development work; the mining equipment needed for successful operations and its cost; whether the claim is properly classified as a placer or lode claim. In addition, customs of miners become relevant to the determination of such questions as: which of competing claimants made a prior claim and what is the physical extent of a claim (*e.g.*, how far a claimant is entitled to follow a particular vein).

[14] See, *e.g.*, *Foster* v. *Seaton*, 271 F. 2d 836, 838 (C.A.D.C.).

reason to allow the issues of the contests to be resolved by the administrative agency, with its special experience and expertise in these matters." As the court pointed out (R. 17), the government was challenging the validity of the mining claims on the grounds that the land involved is nonmineral in character, and that minerals have not been found in sufficient quantities to constitute a valid discovery (see R. 14). These are issues coming within the "special competency and administrative experience" of the "Bureau of Land Management * * * in the hearing of contests of claims relating to the public lands" (R. 19). Particularly in view of the rule that courts ordinarily are precluded from enjoining the conduct of administrative proceedings (see, *e.g.*, *Macauley* v. *Waterman Steamship Corp.*, 327 U.S. 540), the court of appeals erred in overturning the district court's decision to permit the administrative proceedings before the expert agency to go forward.

The Ninth Circuit's reliance on Rule 71A(h) of the Federal Rules of Civil Procedure to preclude reference of the issue of validity of the mining claim to the Department of the Interior is completely misplaced. For its interpretation of the Rule as requiring the district court to decide all the issues in the condemnation suit would also preclude reference of questions of state law to appropriate state tribunals. This reading of Rule 71A(h), which is in conflict with the views of the many courts which have stayed their condemnation actions to allow matters of state law to be tried in state courts,[13] is wholly un-

[13] See notes 8, 10, *supra*.

warranted. The twofold purpose of Rule 71A(h) was (1) to specify the conditions on which trial of the issue of just compensation was to be to a commission rather than to a jury and (2) to allocate between the court, on the one hand, and the jury or commission, on the other, the determination of relevant issues. It is to the latter problem that the last sentence of the subsection is addressed: "Trial of all issues shall otherwise be by the court." There was plainly no purpose of limiting the court's recourse to state tribunals or administrative agencies on appropriate questions. The full intent and effect of the quoted sentence was to foreclose any argument that there is a right to jury trial on issues other than just compensation.

3. The Ninth Circuit's decision affects the course of proceedings in a vast number of cases, for a great part of the western public domain is subject to mining claims, most of which are dormant but the validity of which can be determined only by investigating each individual case. The United States Attorney for the Southern District of California has advised that in that district alone over 2,200 mining claims are involved in pending condemnation litigation. Some indication of the volume of litigation affected in the Northern District of California may be obtained from the fact that the Sacramento Regional Office of the Department of the Interior has processed some 6,200 unpatented mining claims on the single project that gives rise to the present litigation. Over 2,000 of these were included in condemnation proceed-

ings. Each of these mining claims involves a separate case determined on the basis of its own particular facts.

This massive volume of litigation has a significance even more far-reaching than its bearing upon the importance of the Ninth Circuit's errors in denying the government the use of customary administrative proceedings when it must obtain immediate possession and in precluding the district court from allowing a reference of a limited and technical issue to a more expert tribunal. A very substantial additional workload will be imposed upon district courts in any area within the Ninth Circuit where the government proceeds to obtain immediate possession of land by filing a condemnation action since under the decision below the district court, rather than the Department of the Interior will have to adjudicate the mining claims. The significance of this burden can be appreciated by comparing the 1,682 cases of all types which were pending in the Northern District of California at the close of the third quarter of the fiscal year of 1961 [16] with the 2,000 unpatented mining claims included in condemnation actions that were processed by the Sacramento Regional Office of the Department of the Interior in connection with the project involved in the present case alone.

4. Finally, the decision below casts a cloud upon the literally thousands of prior administrative proceedings that have been initiated and concluded during

[16] Table C-1, Quarterly Report of the Director of the Administrative Office of the United States Courts.

the course of a condemnation action in a federal court. The district courts in the Ninth Circuit have allowed the United States to dismiss numerous condemnation actions against claimants of mineral rights whose claims have been rejected in a full administrative proceeding. It is by no means clear that these claimants will be barred by doctrines of *res judicata* from reopening the question of title in the district courts on the basis of an allegation that under the Ninth Circuit's decision the Department of the Interior lacked jurisdiction to determine the validity of their mining claims.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ARCHIBALD COX,
Solicitor General.
ROGER P. MARQUIS,
A. DONALD MILLER,
Attorneys.

DECEMBER 1961.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17,093. Aug. 18, 1961

HUMBOLDT PLACER MINING COMPANY, A CORPORATION, AND DEL DE ROSIER, APPELLANTS

vs.

RAYMOND R. BEST, AS STATE SUPERVISOR, BUREAU OF LAND MANAGEMENT, AND WALTER E. BECK, AS MANAGER, DISTRICT LAND OFFICE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

Charles L. Gilmore for appellants.

A. Donald Mileur, Attorney, Department of Justice [with him on the brief were *J. Edward Williams,* Acting Assistant Attorney General; *Laurence E. Dayton,* United States Attorney, and *J. Harold Weise,* Assistant United States Attorney, San Francisco, California; and *S. Billingsley Hill,* Attorney, Department of Justice], for appellees.

Before CHAMBERS, JERTBERG and KOELSCH, *Circuit Judges.*

JERTBERG, *Circuit Judge.*

Appellants appeal from a summary judgment dismissing their complaint seeking injunctive relief against the appellees.

Jurisdiction of the district court is predicated on the alleged presence of a federal question, Title 28 U.S.C.A. Sections 1358 and 1331. The amount in controversy is alleged to exceed $10,000. This Court has jurisdiction to review the judgment under Title 28 U.S.C.A. Sections 1291 and 1294.

It appears that on June 27, 1957, the United States of America, under its powers of eminent domain, filed an action in condemnation in the United States District Court for the Northern District of California, Northern Division, seeking to acquire title to or outstanding adverse interests in lands located in Trinity County, California, on part of which are located unpatented mining claims of which appellants claim to be the owners and to which they claim the right of possession. These mining claims are located upon public lands the paramount title to which is in the United States. On instructions from the Solicitor of the Department of the Interior, dated June 5, 1957, the district court in the condemnation proceedings issued to the United States a writ of possession.

On March 17, 1960 appellees, who are officials of the Bureau of Land Management, Department of the Interior, filed in the office of the Bureau of Land Management, at Sacramento, California, a government contest seeking an adjudication by the Bureau of Land Management of the validity of appellants' mining claims. Said government contest complaint alleged that the land embraced within appellants' mining claims is non-mineral in character and that minerals had not been found within the limits of the claims in sufficient quantities to constitute a valid discovery. Appellants were ordered to appear before the Bureau of Land Management in this contest proceedings.

Thereafter appellants instituted their action in the district court, seeking to enjoin and restrain the appellees from proceeding in any manner in connection with the alleged government contest complaint filed with the Bureau of Land Management on behalf of the government. In this complaint filed in the district court appellants alleged that they were the owners of the mining claims and that each of them included lands of established and known mineral character, upon which as to each separate claim a discovery of valuable mineral has been made and that each of them has been and is held and worked by extensive excavation for its valuable gold content. Appellants further alleged that the appellees in proceeding with said government contest were acting in excess of authority in that, because of the pendency of the condemnation action, the administrative proceedings will result in a multiplicity of suits and that the appellants will be subjected to prolonged litigation, and that the settlement and determination of all questions of title are wholly and entirely within the exclusive jurisdiction of the district court in the condemnation proceedings.

Appellees filed no answer to the complaint filed by appellants in the district court, but in response to the court's order to show cause why a preliminary injunction should not be issued moved the district court to vacate a temporary restraining order previously issued, and moved the district court to dismiss the complaint. The district court treated the motion of appellees as a motion for summary judgment under Rule 56, Federal Rules of Civil Procedure, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Following a hearing, a summary judgment in favor of appellees was entered.

Absent the filing and the pendency of the condemnation action, appellants concede that the United States may initiate a contest proceeding before the Bureau of Land Management for the purpose of having adjudicated the legality and validity of an unpatented mining claim on public land. Such is undoubtedly the law. See *Cameron* v. *United States*, (1920), 252 U.S. 450.

The United States, plaintiff in the condemnation proceedings, is not a party to the instant case. The appellees (defendants in the district court) are subordinate officials of the Bureau of Land Management of the Department of the Interior. While we are not advised whether the district court has deferred further proceedings in the condemnation action pending the final determination of the administrative proceedings, it is clear from the following language of the district court's opinion in the instant case that such action will be taken. In the opinion of the district court *Humboldt Placer Mining Company and Del De Rosier* v. *Raymond R. Best, etc.*, 185 F. Supp. 290, he stated:

> Harmful multiplicity of litigation will not be involved, for the issues raised in the contest will not be tried by this Court in the condemnation cases. Until the resolution of the contests, the question of who, if anybody, is entitled to just compensation will be held in abeyance.

It is not disputed that a valid mining claim on public land, though unpatented, is an interest in real property which cannot be taken from the owner thereof under the power of eminent domain except upon the payment of just compensation. *North American Transportation & Trading Company* v. *United States*, (1918), 53 Ct. Cls. 424, affirmed

(1920) 253 U.S. 330; *Phillips* v. *United States* (9th Cir. 1957), 243 F. 2d 1.

The complaint in condemnation was filed in the district court on behalf of the United States by the Attorney General of the United States, at the instance and diretcion of the Solicitor of the Department of the Interior, exercising the authority of the Secretary of the Interior, pursuant to the provisions of Title 40 U.S.C.A. § 257.[1]

The district court has jurisdiction of a condemnation action.[2] Inherent in the condemnation proceedings is the issue of the validity of appellants' mining claims. If valid, the appellants are entitled to just compensation for the taking thereof. If invalid, appellants have no compensable interest therein. The jurisdiction of the district court to determine the validity of the mining claims on public lands is not questioned. See *United States* v. *Schultz* (9th Cir. 1929), 31 F. 2d 764.

---

[1] "§ 257. Condemnation of realty for sites and other uses

"In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, under this section and section 258 of this title, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice."

[2] Title 28 U.S.C.A. § 1358. "Eminent domain

"The district courts shall have original jurisdiction of all proceedings to condemn real estate for the use of the United States or its departments or agencies."

If any doubt should exist as to whether the validity of the mining claims was put in issue in the condemnation proceedings, such doubt is removed by the allegation contained in the condemnation complaint wherein it is alleged that the plaintiff is the owner of the lands upon which the mining claims are located and that each of the mining claims is invalid. While we recognize that neither the filing of the condemnation action nor the order for immediate possession obtained therein constitutes any admission by the plaintiff as to the validity of the mining claims—see *United States* v. *93,970 Acres of Land, et al,* (1959), 360 U.S. 328—nevertheless, the issue of validity of the mining claims is not removed from the condemnation action on the mere allegation that the mining claims are invalid.

Thus it is clear to us that the Secretary of the Interior did not resort to the condemnation action solely for the purpose of obtaining possession of the lands upon which the mining claims are located, and it is equally clear to us that the Secretary elected to put into issue in the condemnation action the validity of the mining claims.

After 44 months, during which the issue of validity was before the district court in the condemnation action, and during which, by virtue of writ of possession granted by the district court to the plaintiff at the instance and request of the Secretary of the Interior, the plaintiff was and still is in possession of the lands upon which the mining claims are located, and during which the appellants, who do not contest the right and power of the plaintiff to condemn their claimed valid mining claims, were presumably waiting trial on the issues involved in the condemnation action, the Secretary of the Interior, through his subordinates, initiated the administrative

proceedings whereby he seeks to select another forum in which to adjudicate the validity of the mining claims.

The broad question presented by this appeal is whether the district court erred in refusing to enjoin appellees from proceeding further in the administrative proceedings, and in stating that the condemnation proceedings will be held in abeyance pending the final decision of the administrative tribunal.

The effect of the district court's action is to require appellants to depart from the district court and undergo litigation in an administrative tribunal on one of the issues before the district court in the condemnation proceedings. If the decision is adverse to the appellants, the appellants must exhaust their administrative remedies before seeking judicial review of such decision. See *Adams* v. *Witmer*, (9th Cir., 1959), 271 F. 2d 29; Title 5 U.S.C.A. § 1009. Included in the administrative remedy is an appeal to the Secretary of the Interior, Title 43, Code of Federal Regulations § 221.31.[3] The Solicitor of the Department of the Interior may exercise all of the authority of the Secretary of the Interior with respect to the disposition of appeals to the Secretary from the decisions of the Director of the Bureau of Land Management [or his

---

[3] 43 Code of Federal Regulations.

"§ 221.31 *Right of appeal to the Secretary of the Interior.* Any party adversely affected may appeal to the Secretary of the Interior from a final decision of the Director, whether such final decision is on an appeal or is an original decision, except from such a decision which, prior to promulgation, has been approved by the Secretary. No appeal, however, may be taken from a decision of the Director affirming a decision of a subordinate official of the Bureau in any case where the party adversely affected shall have failed to appeal from the decision of such official."

delegates]. Order No. 2509, 17 Federal Register 6794, Section 23. The Solicitor is the official at whose direction the condemnation action was filed by the Attorney General on behalf of the United States, and in which it is alleged that appellants' mining claims are invalid. An adverse decision before the administrative tribunal may require appellants to proceed to this Circuit. See *Adams* v. *Witmer*, supra.

On the other hand, if the administrative decision should be in favor of appellants, appellants must return to the district court in order to have determined the issue of just compensation to which appellants may be entitled, which issue is beyond the power and jurisdiction of the administrative tribunal.

In *Humboldt Placer Mining Company* v. *Best*, supra, the district court stated:

> The affidavits and exhibits filed by defendants in this case disclose that the purpose of the filing of the condemnation suits was to get immediate possession. No authority, or reason, is advanced by plaintiffs which will support the proposition that such suits constitute an irrevocable election of forum. It may be assumed that if the Government raised the issue of validity of the claims in this Court, and at the same time vexed plaintiffs by filing contest claims before the Bureau of Land Management, this Court would have power to protect its jurisdiction, and to prevent harassment of plaintiffs, by enjoining further prosecution of the contests. In fact, a failure to do so would likely constitute an abuse of discretion. (Crosley Corporation v. Hazeltine Corporation, 122 F. 2d 925). But where a court has jurisdiction of an entire controversy, it may wait until a

> court or tribunal of more limited jurisdiction adjudicates the issues peculiarly within its competency, and then give binding effect to the decision of such court or tribunal. (United States v, Eisenbeis, 112 Fed. 190; United States v. Adamant Co., 197 F. 2d 1; and See: Railroad Comm'n. v. Pullman Co., 312 U.S. 496; and Louisiana P. & L. Co. v. City of Thibodaux, 360 U.S. 25).

While it is clear from other parts of the district court's opinion that in stating "the purpose of the filing of the condemnation suits was to get immediate possession," the court did not intend to foreclose appellants from a hearing on the issue of just compensation should the decision of the administrative tribunal be favorable, we believe, for the reason hereinabove stated, that the court was in error in stating that the issue of the validity of the mining claims are not raised in the condemnation proceedings.

It is made clear by the above quoted language from the decision of the district court, and the authorities therein cited, that the district court was of the view that there existed in the district court and the administrative tribunal concurrent jurisdiction to determine the issue of validity of the mining claims. In our view, the Secretary of the Interior invoked the jurisdiction of the district court to have such issue determined by the district court. We note that Rule 71A (h) of the Federal Rules of Civil Procedure provides that if an action involves the exercise of the power of eminent domain, and in the absence of any tribunal specially constituted by an Act of Congress governing the case for the trial of the issue of just compensation, that any party may have a trial by jury on the issue of just compensation by filing a demand therefor un-

less the court in its discretion orders determination of such issue by a commission of three persons appointed by it. The concluding sentence of said section is, "Trial on all issues shall otherwise be by the court." No statute or controlling authority has been called to our attention indicating that the administrative tribunal within the Department of the Interior retains jurisdiction to adjudicate the validity of mining claims after the Secretary of the Interior has invoked the jurisdiction of the district court by the filing of a condemnation action in which is raised the same issue.

Appellees rely on *United States* v. *Minilee Baker*, 60 I.D. 241 (1948), a decision of the Solicitor of the Department of the Interior in which it was held that proceedings to condemn public land for military purposes and taking possession thereof by the government would not affect the authority of the Bureau of Land Management to adjudicate the validity of a mining claim located on the land taken. The only authority cited for such conclusion is *Cameron* v. *United States*, supra. The *Cameron* case does not support the decision of the Solicitor. Eminent domain proceedings were not involved in *Cameron*. The jurisdiction of the district court was not invoked until after the Land Department of the Department of the Interior had adjudicated that the mining claim of Cameron was invalid. When Cameron refused to surrender possession of his mining location, the United States instituted an action in the district court in the nature of trespass to eject and dispossess him.

The judgment of the district court is vacated and set aside and the cause remanded to the district court for further proceedings consistent with the views herein expressed.

(Endorsed) Opinion Filed Aug. 18, 1961.

FRANK H. SCHMID, *Clerk*.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 17093

HUMBOLDT PLACER MINING COMPANY, A CORPORATION, AND DEL DE ROSIER, APPELLANTS

v.

RAYMOND R. BEST, AS STATE SUPERVISOR, BUREAU OF LAND MANAGEMENT, ET AL., APPELLEES

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and hereby is vacated and set aside and that this cause be and hereby is remanded to the Disfriet Court for further proceedings consistent with the views herein expressed.

(ENDORSED) Judgment Filed and Entered Aug. 18, 1961.

FRANK H. SCHMID, *Clerk*.

APPENDIX C

Mining Claims Involved in Pending Litigation—Southern District of California

3129–PH	291 Unpatented Claims
769–60–Y	129 Not examined
(Mojave B Range)	55 Validated
	105 Unvalidated
	2 No decision
311–ND	598 Unpatented Claims
3472–ND	161 Validated
(Inyokern Naval Test Station)	437 Unvalidated
14018–PH, et al.	1,246 Unpatented Claims
(29 Palms Marine Base)	22 Validated
	1,113 Unvalidated
	111 No decision
14361–Y	2 Unvalidated
(Randsburg Wash Test Range)	1 No examination
1782–SD	55 Unpatented Claims
2426–SD	5 Validated
(Chocolate Mountain Aerial Gunnery Range)	11 Unvalidated
	39 No decision
19963–WB	66 Unpatented Claims
(Cuddeback Lake Air Force Range)	66 Unvalidated